

**(1973) 09 DEL CK 0011**

**In the Delhi High Court**

**Case No :** Civil Revn. No. 27 of 1966, against order of D.R. Khanna, Addl. Sr. Sub-J., Delhi, D/- 9-8-1966

Tulison Traders, Delhi and Another

APPELLANT

Vs

Gurdit Singh and Others

RESPONDENT

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**Date of Decision :** 14-09-1973

**Acts Referred:**

**Citation :** AIR 1974 Delhi 190 : (1974) ILR Delhi 100

**Hon'ble Judges :** Prithvi Raj, J

**Bench :** Single Bench

**Advocate :** T.N. Sethi and D.P. Gupta, for the Appellant; B.N. Nayar, J.K Seth and I.D. Garg, for the Respondent

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## **Judgement**

1. This civil revision is directed against the judgment dated the 9th August, 1966, passed by Shri D.R. Khanna, Additional Senior Sub-Judge, Delhi, with enhanced appellate Powers whereby he accepted the appeal of respondent Gurdit Singh carrying on business in the name and style of Luxmi Trading Agency against the order and judgment dated the 12th January, 1965, passed by Shri K. C. Dewan, Sub-Judge 2nd Class, Delhi, whereby the learned Sub-Judge dismissed the suit of the respondent Gurdit Singh against the Present petitioners and respondents Nos. 3 and 4, claiming ejectment of the petitioners in respect of a part of the premises in the back portion of the building bearing Municipal No. 764 towards Queens Road, New Delhi, which ejectment was sought on the ground of non-payment of rent. In the result Shri D. R. Khanna, decreed the suit against the present petitioners and respondents 3 and 4 in the present revision petition.

2. Relevant facts necessary for the disposal of this Petition are that building bearing Municipal No. 764, Queens Road, New Delhi, belonged to one Haji Mohd. Yasin. A Part of the building was let out by the owner to, M/s. Overseas Trading Corporation (herein to be called "the Corporation") who rented out the back portion of the premises comprised in their tenancy to respondent Gurdit Singh

and Luxmi Trading Agency, of which Gurdit Singh was the proprietor. Gurdit Singh subsequently sub-let a part of the said premises to, Luxmi Soda Water Factory, respondent No. 3 with the consent and knowledge of the Corporation, on a monthly rent of Rs. 39. Luxmi Soda Water Factory was run by one Onkar Singh who took with him in partnership Joginder Singh son of Gurdit Singh on the basis of partnership deed, Exhibit P/1. This partnership was continued for a short period of 5 to 6 months and was dissolved by dissolution deed, Exhibit P/2. After dissolution Onkar Singh continued to be the sole owner of the Luxmi Soda Water Factory. Onkar Singh eventually sold the, said business, its assets and the goodwill to Petitioner Tarlok Nath and Kundan Lai Tuli, respondent No. 4, who were accepted as tenants by Gurdit Singh. Tarlok Nath and Kundan Lai subsequently carried on the business under the name and style of Tulison Traders, petitioner No. 1.

3. Gurdit Singh filed suit (suit No. 565 of 1958) seeking ejectment of the petitioners and respondents 3 and 4 from the premises which were sub-let to them by Gurdit Singh on the ground that the tenants were in arrears of rent which rent had not been Paid from the 1st September, 1955 to 31st July, 1958.

4. The defendants in the above said suit resisted the same on a host of grounds. It was contended by them that Kundan Lai had retired from the business; that Luxmi Soda Water Factory stopped business and was not in occupation of the premises and that they were not necessary parties to the suit. It was further alleged that on the migration of the owner of the property to Pakistan, the property became evacuee property which was purchased by Sarvshri Faqir , Banwari Lai and others; that they were required to be impleaded as parties to the suit, being owners of the property. On merits it was contended that Gurdit Singh and Luxmi Trading Company did not sub-let the portion in question to the petitioners. No question of any default, Therefore, as the petitioners were not tenants under them it was claimed that the petitioners had paid up to date rent to the owner-landlord, viz., Faqir Chand and others who had purchased the property. By way of additional pleas it was alleged that the petitioners were tenants in the portion in their possession -under the Corporation who were tenants under the Custodian. On Faqir Chand and -others becoming landlords the Corporation surrendered the tenancy of the premises in the occupation of the petitioners whereupon the petitioners attorned to the new landlords and had been paying rent directly to them. It was further :alleged that a dispute having arisen between the parties, i.e., Faqir Chand and others, owners of the property and the Corporation, a suit was filed by the own- Faqir Chand and others against the Corporation and that the Corporation manufactured and engineered the filing of this suit by Gurdit Singh. The suit was decreed by Shri R. L. Lamba, Sub-Judge 1st Class, Delhi, by his Judgment dated 10th May, 1961.

5. On appeal being filed by Tulison Traders, the decree passed against them was set aside on the ground that -the suit was bad for non-joinder of necessary parties, viz., the Corporation and -the new purchasers. The case was remanded

for re-decision, After remand, the Corporation was imp leaded as defense No. 5 while the new purchasers were imp leaded as defendants 6 to 20 in the suit. The suit after remand was registered as suit No. 168 of 1962. On the averments of the parties, the Court framed the following issues:

- (1) Whether relationship of landlord and tenant exists between the plaintiffs and defendants 1 to 4?
- (2) Whether defendants 1 to 4 have attorney to defendants 6 to 20? If so, on what terms and to what effect?
- (3) Are defendants 6 to 20 owners of the property?
- (4) Whether the notice served on defendants I to 4 is valid?
- (5) Whether defendants 1 to 4 were tenants under defendant No. 5?
- (6) Relief.

6. Issues 1, 2 and 4 were decided against the plaintiffs, i.e., respondents I and 2 in the present revision petition. On issue No. 3 it was held that defendants 16 to 20 were the owners of the property. In view of findings on issues 1, 2 and 4 issue No. 5 was left undecided. In the result, the suit was dismissed, by Shri K. C. Dewan, Sub-Judge 2nd Class, Delhi.

7. The plaintiffs feeling aggrieved by the said order filed an appeal which was heard by Shri D. R. Khanna. Additional Senior Sub-judge with enhanced appellate powers who by his judgment and decree dated the 9th August, 1966 accepted the same and decreed the suit it is under these, circumstances that the petitioners have come up before this Court in this revision petition.

8. To complete the factual side of the case it may be noted that owners of the property, viz., Faqir Chand and others who were defendants 6 to 20 in suit No. 168 of 1962, filed suit No. 677 of 1961 against defendants 1 to 5 and the plaintiffs in suit No. 168 of 1962, on the allegation that the Corporation was the tenant of the evacuee owner at the rate of Rs. 150 per month and continued to be the tenant on the same terms under the Custodian. The Corporation sub-let a portion of the premises to defendants 1 to 4, in suit No. 168 of 1962 which included the present petitioners as well. After the purchase by them, it was claimed, they wanted to evict the sub-tenants for illegal and unauthorized sub-letting. A notice of eviction was also served. With a view to avoid danger of eviction the petitioners in the present petition entered into a settlement with them whereby the petitioners were accepted as direct tenants under the owners at Rs. 39 per month while the Corporation agreed to remain as tenant of the earlier portion at Rs. 110 per month. The owners also claimed that the relations between them and the Corporation became bad and a suit was filed by them against the Corporation for injunction against the Corporation restraining it from converting the shop in their occupation into a workshop. The owners also contended that the Corporation as counter-blast got suit No. 168 of 1962

instituted against the petitioners. The owners, Therefore, in suit No. 677 of 1961 sought a declaration that the petitioners in this petition were their tenants and further sought an injunction that respondents 1 and 2 in this petition had no right to seek their eviction in execution of the ejectment decree passed by the Court of Shri R. L. Lamba, Sub-Judge 1st Class. It may also be stated here that suit No. 677 of 1961 was filed after passing of the decree by Shri R. L. Lamba but before the suit was remanded for re-trial. The said suit was consolidated by Shri K. C. Dewan, Sub-Judge 2nd Class, with suit No. 168 of 1962 by his order dated the 9th April, 1964. The evidence was recorded in suit No. 168 of 1962.

9. Shri K. C. Dewan, Sub-Judge 2nd Class. by his judgment dated 12th January, 1965, dismissed the suit of respondents 1 and 2 in the present petition who feeling aggrieved by the Judgment of Shri Dewan, filed two appeals being appeal Nos. 107 and 108 of 1965 which were heard and disposed of by Shri D. R. Khanna, Additional Senior Sub-Judge, Delhi. He by a common Judgment dated the 9th August, 1966, dismissed the suit of Faqir Chand and others, owners of the -property and decreed the suit of Gurdit Singh and Laxmi Trading Company, respondents 1 and 2 in this petition.

10. It would be relevant here to note that the petitioners had filed this revision petition against the judgment of the Addl. Senior Sub-Judge in Appeal No. 107 of 1965 while no revision had been filed against the Judgment dated 9th August, 1966 in Appeal No. 108 of 1965, whereby the suit of the auction purchasers was dismissed.

11. Shri B. N. Nayar learned counsel appearing for Gurdit Singh and Laxmi Trading Agency, respondents raised a preliminary objection to the maintainability of the revision petition. It was contended that the suit of the auction purchasers, viz., Faqir Chand and others (Suit No. 677 of 1961) having been dismissed by the first appellate Court in appeal by judgment dated 9th August, 1966, and since no revision had been filed against the said judgment the said finding has become res judicata between the parties. It was, Therefore, urged that the present revision was not maintainable otherwise an anomalous and embarrassing situation of having two inconsistent and contradictory decrees on the record of the Court might be created. Support for this contention was sought from Sumi Devi Vs. Pranakrushna Panda, , wherein it was observed that where two suits Were tried together and were disposed of by the same judgment, but two decrees were drawn up and there was an appeal in only one suit, the appeal was barred when no appeal is -preferred against the other decree. The Orissa High Court noted the Full Bench decision of the Lahore High Court in Mt. Lachhmi v. Mt. Bhulli, Air 1927 Lah 289 , wherein it was held that estoppel was not created by a decree but it could only be created by Judgment, but disagreed with this view. It may bear mention here that judgment in Narhari and Others Vs. Shankar and Others, which judgment expressly approved of the view taken in Mt. Lachhmi's case (supra) was also noted by the Orissa High Court in Sumi Devi's case (Supra) but distinguished Narhari's case (supra) on the ground that it was

not the decision of the Supreme Court of India but a decision of the Supreme Court of Hyderabad. The Orissa High Court, however, observed that had Narhari's case been the decision of the Supreme Court of India, the matter would have been taken as finally settled. If that were so, no help can be drawn from Sumi Devi's case as the Supreme Court in *Badri Narayan Singh Vs. Kamdeo Prasad Singh and Another*, referred to the decision of Narhari's case as the decision of the Supreme Court of India.

12. It would be appropriate here to note the decision of the Supreme Court in Narhari's case, *Air 1953 Sc.* In that case the plaintiff claimed the suit land as belonging to them exclusively according to a family custom as members of the senior line as against the defendants who were of junior line. There were two sets of defendants. Defendants 1 to 4 belonged to one branch of the family and defendants 5 to 8 belonged to the other branch. The defendants denied the custom of the exclusive possession by the senior branch. Each set of the defendants claimed that they were in possession of 1/3rd of the land and maintained that they were entitled to it as their share of the family property. The suit of the plaintiffs was decreed. The two sets of defendants filed two separate appeals, each claiming one-third portion of the land and each filed court-fee to the extent of their share. The first appellate Court allowed both the appeals and dismissed the plaintiffs' suit by one judgment. A copy of the judgment was placed on the file of the other connected appeal. On the basis of the judgment two decrees were prepared by the First Appellate Court. The plaintiffs filed two separate appeals. The appeal that was filed against the decree passed in the appeal of the defendants 5 to 8 was 29 days beyond the period of limitation. This appeal was filed on a rupee one stamp paper and a note was given that full court fee had been paid in the other appeal filed earlier against the decree passed in appeal of defendants 1 to 4. At the hearing an objection was raised by the defendants that the second appeal filed against defendants 5 to 8 being time barred cannot be maintained and if that appeal was dismissed the principle of *res judicata* would apply to the first appeal filed against the decree -passed in the appeal of defendants 1 to 4. The High Court sustained the objection holding that the second appeal was admittedly time-barred. The First appeal also failed by the application of the principle of *res judicata*. The High Court accordingly dismissed both the appeals. Against that judgment two appeals were preferred to the Judicial Committee of the State of Hyderabad, which came before the Supreme Court under Article 374(4) of the Constitution of India. The Supreme Court while dealing with the plea of *res judicata* observed "It is now well settled that where there has been one trial one finding, and one decision there need not be two appeals even though two decrees may have been drawn up. As has been observed by Tek Chand J., in his learned judgment in *Air 1927 Lah 289* ..... the determining factor is not the decree but the matter in controversy. As he puts it later in his Judgment the estoppel is not created by the decree but it can only be created by the judgment. The question of *res judicata* arises only when there are two suits. Even when there are two suits it has been held that a

decision given simultaneously cannot be a decision in the other suit."

13. It will, Therefore, be seen that the Supreme Court specifically approved of the view taken by the Lahore High Court in Mst. Lachhmi's case, Air 1927 Lah 289.

14. Reliance was next placed by Shri Nayar on AIR 1947 74 (Oudh) , wherein it was held that where the appeal was struck off as having abated, the decision would operate as res judicata. It was further submitted by Shri Nayar that the above cited case was approvingly referred to by the Supreme Court in Sheodan Singh Vs. Smt. Daryao Kunwar, in which case the Supreme Court observed that where the appeal was dismissed on some preliminary ground like limitation or default in printing, it must be held that the dismissal when it confirmed the decision of the trial Court on merits, amounted to the appeal being heard and finally decided on merits whatever may be the grounds for dismissal of the appeal. In that case the appellant's father filed a suit against the respondent in the Court of Civil Judge for a declaration that he was the owner of the suit properties and for possession in the alternative. The appellant's father also filed another suit against the respondents and one other in the same Court claiming the price of the crops standing on the land in dispute on the allegation that the respondent had cut and misappropriated the crops without having any right, title or interest therein. The respondent during the pendency of these suits filed two suits in the Court of the Munsif for recovery of her share of crops grown on the land in dispute which were cut and alleged to have been misappropriated by the appellant and his father on the allegation that the lands belonged to the parties jointly and that the crops were jointly sown by them and that she was entitled to half share of the said crops. In the first suit filed by her she claimed relief of permanent injunction restraining the appellant and his father from letting out the land in dispute in that suit without her consent. By the order of the District Judge the two suits filed by the respondent were transferred to the Court of Civil judge where the suits of the appellant's father were pending. All the four suits were consolidated and tried together by the Civil judge with the consent of the parties. The suits were disposed of by a common judgment of the Court but separate decrees were prepared with each suit. In all the suits five issues were common. One of the common issues related to respective rights of the parties to the suit-property. The finding of the Court in respect of that issue was that the respondent was entitled to the properties claimed by the appellant's father in the suit filed by him. In this view of the matter the suit filed by the appellant's father was dismissed while the respondent's two suits for share of crops were decreed. A permanent injunction was also granted in her favor as prayed by her in one of the suits.

15. The High Court dismissed the appeal of the appellant's father on the 9th October, 1953, arising out of the second suit filed by the respondent as being time-barred while the second appeal arising out of the first suit filed by the respondent was dismissed by the High Court on the 7th October, 1955, on the

ground of failure of the appellant's father to apply for translation and printing of records as required by the rules of the High Court. The respondent thereafter made an application praying that the first appeals arising out of the two suits filed by an appellant's father be dismissed as the main question involved therein, namely, her title to the suit property had become final on account of the dismissal of the appeals arising out of the two suits filed by her. The High Court held that though there were four appeals originally before it, two of them having been dismissed and the very same issues had arisen in the appeals filed by the appellant's father had also arisen in the two appeals which had been dismissed arising out of the two suits filed by the respondents. In the result it was held that the terms of Section 11 of the C.P.C. were fully applicable and, Therefore, the first two appeals filed by the appellant's father were barred by res judicata to the extent of the decision of the five issues, which were common in the four connected appeals.

16. Before the Supreme Court it was urged that it could not be said that the appeals arising out of the two suits filed by the respondent were former suits as such the decision thereof was res judicata and that it could not be said that the two appeals from the aforesaid suits filed by the respondent which were dismissed by the High Court, one on the ground of limitation and the other on the ground of non-printing of record were heard and finally decided. The Supreme Court in this connection observed that the High Court's decision in the two appeals arising, from the two suits filed by the respondent was undoubtedly earlier and, Therefore, the condition "that there should have been a decision in the former suit to give rise to res judicata in a subsequent suit was satisfied". It was in these circumstances that the Supreme Court observed, as noted earlier, that where an appeal was dismissed on some preliminary ground it must be held that the dismissal when it confirmed the decision of the trial Court on merits, amounted to the appeal being heard and finally decided on merits.

17. Mst. Lachmi's case, Air 1927 Lah 289 (supra) was again noted by the Supreme Court in Sheodan Singh Vs. Smt. Daryao Kunwar, along with some other decisions, and their Lordships of the Supreme Court while dealing with the rival views expressed by the various High Courts observed as follows at page 1338, "We need not consider the correctness of these rival views as they raise the question as to whether one decision or the other can be said to be former where the two suits were decided by the same judgment on the same date. This question does not fall to be decided before us and we do not propose to express any opinion thereon. But the Nagpur decision AIR 1947 248 (Nagpur) is of no help to the appellant, for in the present case res judicata arises because of earlier decision of the High Court in appeals arising from Suits Nos. 77 and 91. Panchenada Velan v. Vaithinatha. Sastrial, (1906) 29 Mad 333 and Mst. Lachmi v. Bhulli, 2nd (1927) 8 Lah 384 = AIR 1927 Lah 289 are similar to the Nagpur case and we need express no opinion as to their correctness". The Court noted its earlier decision in Narhari and Others Vs. Shankar and Others, and observed that there was only one suit in Narhari's case.

18. A careful perusal of the decision in Sheodan Singh Vs. Smt. Daryao Kunwar, would show that the plea of res judicata was sustained by their Lordships of the Supreme Court because of the decision of the High Court in two appeals arising from the two suits by the respondent and it was in this view of the matter that it was observed that the decision in the two appeals was a decision in the former appeals so as to give rise to res judicata in the subsequent appeals. The bar of res judicata in that case applied to the surviving appeals and not to the judgment. Further, it will be seen that their Lordships of the Supreme Court did not specifically overrule the ratio of the decision in Lachhmi's case, Air 1927 Lah 289 as well as in Narhari and Others Vs. Shankar and Others, about the proposition that the bar of res judicata is created by a judgment and not by a decree. In Sheodan's case res judicata arose because of the earlier decision of the High Court in two appeals.

19. The only ground on which res judicata can be urged in a suit are the provisions of Section 11 of the C.P.C. It is now firmly established that the same principle would govern the appeals arising out of the suits, Section 11 of the C.P.C. postulates that no court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

20. A perusal of the aforesaid section would show that bar to the trial of a suit or issue contemplated by the said section arises only in a suit in which matter directly and substantially in issue had been directly and substantially in issue in a former suit between the same parties and that matter had been heard and finally decided in a former suit. The expression "former suit" denotes the suit which has been decided prior to the suit in question whether or not it was instituted prior thereto. That being so, the question of res judicata would not arise in the case of two suits decided simultaneously by a common judgment as decision given simultaneously cannot be said to be the decision in the former suit qua the other suit. Further, the provisions of Section 11, C.P.C. without doubt show that it is a decision which creates the bar of res judicata and not a decree as the words used in the said section are "heard and finally decided". All that the present petitioners could do was to put the judgment dated the 9th August 1966, in jeopardy through this revision petition. Now that the judgment dated 9th August, 1966, has been put in jeopardy, it cannot operate as res judicata on the ground that the revision has not been filed against this decision qua appeal No. 108 of 1965 as there is no decision (of the first Appellate Court) left on the basis of which it could be urged that there was in existence the bar of res judicata. The effect of the revision in substance is to get rid of the decision dated 9th August 1966. The fact that this revision petition has been filed against common judgment in R.C.A. No. 107 of 1965 but that no revision has been filed against the common judgment in R. C. A. No. 108 of 1965 would not mean that the common

judgment in R.C.A. No. 108 of 1965 not appealed against would become res judicata. The result of consolidating the two suits was to combine the controversy in both the suits as a single controversy and thus making the proceedings of the two suits a single proceedings. Further that controversy and proceedings were concluded in a single judgment dated the 12th January 1965. Against the said judgment in both the suits Gurdit Singh and Laxmi Trading Company filed appeals. The first Appellate Court treating the controversy between the parties as a single controversy, disposed of the appeal by a common judgment. Now that petitioner had not put the judgment in jeopardy, it cannot be said that the same judgment has become res judicata as no revision had been filed against this judgment in appeal No. 108 of 1965. It may bear mention here that the Supreme Court in Sheodan Singh Vs. Smt. Daryao Kunwar, had observed as follows:

"It is well settled that where a decree on the merits is appealed from, the decision of the trial Court loses its character of finality and what was once res judicata again becomes rest sub judice and it is the decree of the appeal Court which will then be res judicata."

21. It was on this principle that in Sheodan Singh Vs. Smt. Daryao Kunwar, the decree of the High Court in the two appeals filed against the judgment in suits Nos. 77 and 91 were held to be res judicata qua the other appeals filed by the father of the appellant. Now that the decision of the first appellate Court is rest sub judice in this revision petition, it cannot be said that the matter stood finally decided between the parties as no revision had been filed against the decision in the appeal arising out of the suit of Faqir Chand and others. It was only if a revision petition against the decision dated the 9th August 1966, in R. C. A. No. 108 of 1965 had been filed and the said revision had been heard and decided by this Court that it could be urged by the respondents that the present revision petition was barred by the principle of res judicata. In such an event alone, help could be drawn from the ratio of the decision in Sheodan Singh's case (supra). However, in the instant case no revision petition had been filed against the judgment dated the 9th August 1966, in Appeal No. 108 of 1965. In the circumstances, it is not possible to hold that there exists a bar of res judicata in the present revision petition.

It is not possible to hold that in cases where the two suits or two appeals are consolidated and heard together, thus combining the controversy in the two suits or the two appeals into a single controversy and make the proceedings a single proceeding and dispose them of by a single judgment, that common judgment shall assume the role of judgment in the former suit in one of the suits so consolidated so as to make the other suit so far as the trial Court was concerned, a subsequent suit in the proceedings. When two suits are decided by a single judgment the expressions "former suit" and "subsequent suit" as contemplated by Section 11, C.P.C. have little significance. The principle of res judicata is based on the maxim that no one shall be tried twice over the same matter. The

question of rest judicators far as the trial Court is concerned where two suits are consolidated and tried simultaneously as a single controversy and as a single proceeding cannot arise. I am supported in this view by a judgment of the Full Bench of the Allahabad High Court in Jai Narain Har Narain and Another Vs. L. Bulaqi Das, . AIR 1947 74 (Oudh) is distinguishable on facts. That was not a case of common judgment in the consolidated cases.

23. Taking notice of Lachhmi's case, Air 1927 Lah 289 and Narhari and Others Vs. Shankar and Others, a Division Bench of this Court in F. A. No. 1-D of 1959 (Oriental Bank of Commerce v. S. Sohan Singh) decided on 25-4-1969, observed that where two suits are consolidated and tried in one trial, there being complete identity of subject-matter in the two suits, and disposed of by one judgment, one appeal could be filed even though two decrees were drawn.

24. The case Sada Nand v. Mohan Devi (F. A. O. No. 100 of 1970) decided on 15-7-1971 (Delhi), by V. D. Misra, J., did not take notice of the above cited decision of a Division Bench of this Court and, Therefore, Shri Nayar can draw no support from the said decision.

25. Coming to the merits of the case, the contention of Shri Sethi, learned counsel for the petitioners, was twofold. Firstly, it was contended that it was not proved on the record that the petitioner had taken on rent the premises in question from Gurdit Singh respondent. They're being no relationship of landlord and tenant, Gurdit Singh and Laxmi Trading Agency had no locus standi to file the ejectment proceedings. Secondly, it was contended that if the above contention be found against the petitioner under the threat of eviction by the auction-purchasers, Faqir Chand and others, the petitioners had attorney to the paramount title. The petitioner had been paying rent thereafter directly to the auction purchasers. In the circumstances, no relief could be granted to Gurdit Singh.

26. Taking up the first contention it may be stated that the case of the petitioners as unfolded in the written statement of petitioner No. 2 was that they were tenants under the Corporation. The petitioner No. 2 Tirloki Nath as D.W. 3 had stated that he had taken the portion in question on rent from the Corporation to whom he used to pay the rent at Rs. 39 per month. According to him, the petitioners were in possession of the said portion since 1950. He denied having taken the portion on rent from Gurdit Singh. In cross-examination, his attention was invited to his earlier statement, Exhibit P/9, which he had made in case Faqir Chand and others v. Overseas Trading Corporation. In that statement he had stated that the petitioners were the tenants of Faqir Chand and others; the portion was taken on rent by his (Tirloki Nath's) brother but he did not know from whom he took the premises on rent. He also stated that for the last 5 or 2 years he was paying rent to Faqir Chand but he did not know to whom the rent was paid prior to that. He admitted that he keeps accounts. When his attention was drawn to the earlier statement Exhibit P/9, and contradictions were pointed out to him in the statement made during the trial of the present case, he could

not say whether his earlier statement was correct or not. According to him the portion in question was taken on rent from the Corporation. Possession of the portion was given on behalf of the Corporation by one Malik Sahib and Sham Lal. No rent deed was executed between him and the Corporation. The Corporation did not issue any rent receipt in his favor as he was told by the Corporation that they could not induct sub-tenants

27. Ram Lal, Pleader, P.W. 5, stated that from 1936 to 1956 he had been carrying on motor spare parts business under the name of Overseas Trading Corporation in the - Premises which he had taken on rent from Haji Mohd. Yasin on whose migration to Pakistan, the property was declared as evacuee property. In 1942 the back portion shown in Exhibit P/3, of the shop was given by him on rent to Gurdit Singh. A portion of the premises with Gurdit Singh was rented out by him to one Sikh gentleman in 1945-46. He further stated that that Sikh gentleman remained in the premises for about six months or a year in that portion. Thereafter, that Sikh gentleman gave the portion in his occupation to the petitioner. He stated that he did not take the rent of that portion either from that Sikh gentleman or from Triloki Nath petitioner. He further stated that he used to maintain accounts. He had brought the books of account for another partner of the Corporation deposed that the petitioners were not tenants under the Corporation nor did he ever receive rent from them. He stated that the petitioner never gave any notice to him intimating that he had attorney to Yaqir Chand. It is significant here to note that no questions in cross-examination were put to either of these two witnesses in respect of the books of account brought by them to ascertain if any en- existed in their books of account in respect of rent alleged to have been paid by Triloki Nath petitioner prior to his alleged attornment to Fauir Chand.

28. Onkar Singh, P.W. 4. Stated that he was engaged in Soda water business in 1944-45 at Muradnagar. In May 1946 he took Joginder Singh son of Gurdit Singh respondent in this revision petition in partnership vide Exhibit P/1. The partnership business was carried on in the portion in dispute at Queen's Road. The partnership lasted for 5/6 months now here after it was dissolved vide Exhibit P/2 and he (Onkar Singh) became the sole owner of the partnership business. After dissolution of the partnership he used to pay rent to Gurdit Singh which was sometimes paid in cash and some times through cheques. He continued that business till 1950 where after he sold the business under the name and style of Luxmi Soda water Factory along with its goodwill and stock in trade to Triloki Nath petitioner for Rs. 4,000. This sale was effected through one Jagdev Singh. Triloki Nath thereafter started paying rent to Gurdit Singh. He however. stated that he did not make any entry regarding Rs. 4,000 in his books of account. P. W. 7, Shri Jagdev Singh, stated that Triloki Nath in the year 1950 came to him and asked him to get some premises on rent. He contacted Onkar Singh in that respect and Omkar Singh sold his business, Laxmi Sodawater Factory, which he was carrying on in the disputed premises in favor of Triloki Nath for Rs. 4,000. The possession of the premises in dispute was given to Triloki

Nath by Onkar Singh. The deal was in writing. He was a marginal witness to it. It was on stamp paper. He did not remember who were the scribe and other marginal witnesses of the said deed.

29. Gurdit Singh respondents supported his case in his statement. In cross- he stated that he did not get any rent note executed from Triloki Nath. He stated that no account in the name of Tulison Traders, petitioner No. 1, existed in his books of account.

30. The petitioner produced Surinder Lal postman D.W. 1-A who stated that the property in dispute was within his beat. He had been working as postman in the said beat for 8 years. He did not notice any firm by the name of Laxmi Trading Agency or Laxmi Sodawater Factory in the premises in dispute in which premises he always found Triloki Nath petitioner in possession. He deposed that Sham Lal and Ram Lal owners of the Overseas Trading Corporation came to Triloki Nath in his presence and took rent from him. On one occasion the rent was taken by Ram Lal while on the other occasion the rent was taken by Sham Lal. He could not say what amount of rent was taken by Ram Lal and Sham Lal.

31. It would be pertinent here to note that no suggestion was put either to Ram Lal or to Sham Lal when they appeared in the witness box that rent was taken by them in the presence of Surinder Lal postman. After the case was remanded for fresh trial on impleading the auction purchasers of the property, fresh evidence was recorded in the matter.

32. Onkar Singh who appeared as P.W. 1 reiterated his contention that he sold his business to Triloki Nath for Rs. 4,000. He stated that he issued receipt for the said amount.

33. Jagdev Singh also appeared as P.W. 2 and stated that in 1950 Luxmi Soda water Factory was purchased by Triloki Nath on the basis of deed which was written by Triloki Nath to which he and Onkar Singh were the marginal witnesses. His attention was invited to portion A to A of his earlier statement wherein he had stated that no receipt was executed whereupon he deposed that he did not know who executed the deed. Explaining the omission he stated that at the time he did not remember the name of the scribe and the marginal witnesses.

34. D.W. 1 Ishar Singh could not state from whom Tulison Traders took possession of the premises in dispute.

35. On the above state of evidence the first appellate Court held that the contention of the petitioners that they were the tenants under the Corporation was absolutely baseless and "not borne out from any evidence worth credence on record". In my opinion the finding of the first appellate Court in this respect is unassailable. The statement of Triloki Nath, Exhibit P/9, made in a previous suit clearly destroys his assertion that he was a tenant under the Corporation. He expressed his ignorance as to who was his landlord as according to him the premises in dispute were taken by his brother, He, however did not examine his

brother as a witness during the proceedings. He having admitted that he used to maintain books of account failed to produce the same to show as to whom the rent was being paid by him.

36. From documents Exhibits P/1 and P/2 it has to be held that business in the name of Luxmi Soda water Factory was carried on in the disputed premises. It is significant here to note that Triloki Nath filed written statement not only on his behalf but also on behalf of Luxmi Soda water Factory.

37. The fact that water connection in the premises still exists in the name of Onkar Singh which fact is admitted by Triloki Nath petitioner, is sufficient to conclude that Onkar Singh had some connection with the premises, This circumstance supports the contention of Gurdit Singh respondent.

38. Triloki Nath did not produce the books of account. The first appellate Court was right in drawing a presumption against him that had the account books been produced they would have gone against him and that they have been withheld in order to conceal the factum of payment of rent to Gurdit Singh. The statement of Triloki Nath that he did not remember as to whom he had been paying rent destroys his case in respect of his having taken the premises on rent from the Corporation.

39. Ram Lal P.W. 5 who was at one time one of the owners of the Corporation had specifically stated that he had not given on rent any -portion to Triloki Nath. He produced the account books of his concern and no question was put to him whether any entries existed in his account books with regard to the payment of rent made by Triloki Nath. Had any rent been paid to the Corporation certainly it would have found a mention in the account books of the said Corporation.

40. Shri Sethi, learned counsel for the petitioners, contended that no rent note was produced by Gurdit Singh in proof of his plea that the premises were sublet by him to Onkar Singh nor he produced any document to show that Onkar Singh had been paying rent to him. Further, although Onkar Singh alleged that some amount of rent was paid by cheques but there was no proof to substantiate that assertion. It was also submitted that there was no account in the name of Tulison Traders in the books of account of Gurdit Singh. The cumulative effect of all that was that the subletting to Onkar Singh was not proved. If that be so, the further stand that Onkar Singh surrendered the premises to the petitioners automatically falls to the ground.

41. This argument fails to take note of the fact that water meter in the premises is still in the name of Onkar Singh which without doubt goes to show that Onkar Singh was in possession of the premises. There is nothing on the record to rebut the statements of Onkar Singh, Joginder Singh and Gurdit Singh that the premises were let out to Onkar Singh by Gurdit Singh who carried on business in these premises in the name of Laxmi Soda water Factory and later took in partnership with him Joginder Singh -eon of Gurdit Singh vide Exhibit P/ 1. The partnership was disrupted, later on vide Exhibit P/2 and Gakar Singh again

became the full owner of that business. Exhibit P/1 and Exhibit P/2 are on stamp papers. The petitioners have not been able to assail the genuineness of the said documents. In the circumstances the said documents assume significance to lend support to the contention of Guviya Singh. On the state of evidence the first appellate Court Preferred the evidence produced by Gurdit Singh in holding that the Petitioners are tenants under him. The view taken by the first appellate Court cannot be said to be erroneous or not backed by evidence. The finding of the first appellate Court in this respect is affirmed.

42. The next contention of the learned counsel for the petitioners was that the petitioners under a threat of eviction from the Paramount title, Faqir Chard and others auction-purchasers, have directly attorney to them, On this account alone, it was urged the petition deserves to be accepted, It was urged that it was open to a tenant, even without surrendering possession to contend that, under a threat of eviction he had attorney to the paramount title. Shri Sethi contended that it would be sufficient for the petitioners to show that there was threat of eviction and if the petitioners as a result of such threat attorney to the real owner the suit of Gurdit Singh respondent must fail. To substantiate this contention reliance was placed on the statement of D.W. 2, Faqir Chand auction purchaser, to the effect that a notice of eviction was served, on the petitioners through Om Parkash Goel who retained a copy of the notice in his office but despite search the copy of notice was not available He also stated that in January, 1956, he went to demand rent. from the Corporation when a compromise was arrived at between him and Ram Lal and Sharp Lal of the Corporation in the following manner The portion which was in possession of the Corporation it was to pay a rent of Rs. 110 per month in future while for the portion which was in occupation of Triloki Nath, the rent was settled at Rs. 39 per month. He admitted that the settlement regarding the new arrangement of receiving rent took place between him and Ram Lal and Sham Lal except whom no other person was present In his supplementary statement Faqir Chand admitted that no compromise deed was executed but that separate receipts of rent were issued to the Corporation and to Tulsons He further stated that the compromise took place in January, 1956.

43. Ishar Singh D.W. 1 stated that Triloki Nath came to him about 7 or 8 years before his examination in the Court and asked him to have the dispute regarding the portion in his possession settled with the owner, Faqir Chand, Triloki Nath was stated to have asked Ishar Singh to help in directly settling the tenancy with the owners who were troubling him. Accordingly a compromise was arrived at between Triloki Nath and Faqir Chand under which Faqir Chand accepted Triloki Nath as his tenant directly at Rs. 39 or 40 month in cross-examination he stated that no com- deed was executed in his presence. Only Faqir Chand promised that he would create the tenancy in the name of Tulsons.

44 Om Parkash Goel, Advocate, was not produced.

45. Triloki Nath appearing as D.W. 3 stated that he received notice from Yfaqir

Chand for vacating the portion in his occupation. But the copy of the said notice was misplaced by him. After the receipt of the notice a compromise took place between him and Faqir Chand and others according IA- which the Corporation was to pay Rs. 110 as rent of the portion their occupation and the portion which was in occupation of Triloki Nath, he was to pay rent at the rate of Rs. 39 per month. He stated that in this way it was settled between the parties that the Corporation and he were to pay rent directly to the landlord. He produced receipts of rent having been paid to Faqir Chand and also tendered in evidence copy of bank account, Exhibit D.W. 1/1.

46. The evidence led by Triloki Nath does not inspire confidence. According to Faqir Chand a settlement took place between him, Rain Lal and Sharn Lal and no other person was present. The case of Triloki Nath was that the compromise was settled between Faqir Chand and him on the intervention of Ishar Singh. It is surprising that not only the copy of the alleged notice for getting the premises vacated was not traceable in the office of Om Parkash Goel through whom the said notice was got issued but the copy of the notice received by Triloki Nath should also be not available. Om Parkash was not produced; neither any evidence was summoned from the post office to show that the notice for getting the premises vacated was issued through registered post. Even if it were held that the copy of the said notice was lost in the office of Om Parkash Goel, omission to summon evidence from the post office is significant. On this state of evidence it is not possible to hold that under the threat of eviction Triloki Nath settled with the owner Faqir Chand. In this view of the matter the finding of the first appellate Court that the oral story of the intervention of the paramount title stands negatived, has to be upheld.

47. Shri Sethi cited some authorities at the bar in support of the contention that Triloki Nath under a threat of eviction attorney to the paramount title. In view of the fact that the petitioners have failed to prove that there any threat of eviction from the paramount title, the said authorities are not required to be taken note of.

48 In view of my above discussion on various points noted above, the revision petition fails and are dismissed with costs.

49. Revision dismissed